IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CIVIL APPLICATION NO. 82 OF 2004.
IN
FAMILY COURT APPEAL NO.57 OF 2004.

Sou Hema Ravishankar. ..Applicant
vs.
K.R. Ravishankar. ..Respondent

Ms.Sonal i/b Shri Anupkumar Bakshi for the applicant.

Ms.Suhasini Mutalik for the respondent.

CORAM: S.B. MHASE AND
R.S. MOHITE,JJ.
DATED: 18.10.2004.

P.C.:

. This is a civil application for grant of stay of the judgment and order dated 30th April 2004 passed by the Family Court, Pune, in Petition No. A-605 of 2000, on such terms and conditions as this Court may deem fit. By the impugned judgment and order the Family Court has dissolved the marriage between the parties on the ground of cruelty. The Family Court had also directed the appellant-wife to hand over the custody of the minor son "Shrikrishna" to the respondent-father K.R. Ravishankar and has granted access and visiting rights to the appellant-wife.

2. This civil application was moved by the appellant before the Vacation Judge and on

27.5.2004 she obtained an ad-interim stay of the impugned judgment and order. Thereafter, this civil application was heard on several occasions. After hearing the parties and perusing the record, the Division Bench of this Court to which one of us (R.S. Mohite, J.) was a party called and heard the mother of the child ‘Hema’, her sister by name" Malati", father of the child ‘Ravishankar’ and the grand parents from the paternal side, in chambers. On interrogation of the parties, we find that mother is a Lecturer in a college and though she has adequate income of about Rs. 17,000/- p.m. she is required to leave the residence early in the morning and return late in the afternoon. During this period, the child is left to the care of a servant. Her sister Malati resides on the same floor and is the immediate neighbour of the appellant-wife. However, her sister is also a working woman and is also required to leave intermittently and remains out of the premises during the day time. Though, we were told that the child is under the care of a servant in the premises, on interrogation of the child, it was revealed that the servant stays about a km. away and comes in the morning.

3. As against this, we find that the grand parents of the child were residing in Pune. The grand-father had retired from Telco. We find the grand-parents to be dignified persons. The father of the child resides in a separate flat. He is having consultation business which he carries on in the said flat. He was agreeable to shift with child to the flat of grand-parents.

4. When we called the child for interrogation, we were informed that the said child was not willing to speak unless his mother was present. On asking the child, whether his grand-parents loved him, the child made certain allegations to the effect that his grand-father used to violate him physically. The mother stated that she was aware of the said fact throughout. We find that there was absolutely no allegation of this sort made by the mother in any of her pleadings. On being asked about this, the mother informed us that she was advised not to make such allegation though she knew about the alleged misbehaviour of the grand-father even earlier.

5. The appellant-wife now states the fact of physical molestation of the child by the

grand-father. The said disclosure is made for the first time in a rejoinder which is filed in this civil application. We find that in the impugned judgment reference has been made to the grand-parents and to the fact that they shall be in a position to take care of the child. We have no hesitation in disbelieving the theory of molestation which is being put forward for the first time. The obvious intention appears to be to discredit the elderly grand-father. Be that as it may, a further affidavit dated 12.10.2004 has been filed by the grand-father in which he has stated that he and his wife love their grandchild and will take good care of him. He has also stated in the said affidavit that he will allow his grand-son to stay in his house and take proper care. From the bearing of the child, we find that the child appears to be tutored to say such horrendous things about his grand-father. It is an admitted position that the child is about 8 1/2 years. It is further admitted position that the child last resided with the grand-father over 4 years ago. It appears that when such allegations are made against the grand-father, the child must have been barely 4 years of age. We refuse to believe that a child of this age could remember

and say such things against his grand-father as contained in the affidavit in rejoinder, unless he is tutored to state such facts.

6. We have also perused the access reports on record . The same indicates that during the meeting, the child was playing and talking with his father freely. During this meeting, both were reading comics, maps and colouring pictures together. The child was playing with toys and that relationship between child and father was normal. Such observations are contained in the reports dated 4.6.2003 and 5.7.2003. When we asked the child whether he would like to go to his father, the child stated that he would not like to do so and when asked why he replied that the father had taken him to a shopping mall but had not bought any toys. The child was found to be under tension.

7. Taking an overall view of the matter, we feel that it would be better if the child is kept in the costody of the father and grand-father rather than to abandon the child to the care of servant during the day, while the Applicant-mother is out on her job. The child is over 7 years old and we feel that the

directions given in the impugned judgment and order, do not require to be stayed in the interest and healthy development of the child. A child of 5 years is normally to be given in custody of his father. The father is having his own premises and is earning about Rs. 10,000/- p.m. as consultation fees which in our view is sufficient for him to look after the interests of the child.

8. The father has not married for a second time and agrees and undertakes to reside with his parents with the child. He states that he will shift from the present residence where he resides alone and uses for office purpose and stay with his father and mother who are staying separately as soon as he receives custody of the child. This undertaking is accepted.

9. Applicant-wife shall hand over custody of the child to the respondent-father in the morning of 1st November 2004 at 11 a.m. The respondent-father should come to collect the child where the mother-applicant resides. The respondent-father will also grant access to the appellant-mother strictly in accordance with the directions contained impugned order and will

ensure that child and the mother are not disturbed during the period when access is given and they are together.

10. We may place on record that the respondent-father has also approached and obtained a certificate from Late P.B. Jog English Medium School, Mayur Colony, Kothrud, Pune, which is proximate to the respondent's flat. The school has given a certificate which is placed on record, indicating that they would admit the child to their school. This is another factor which enures to the welfare of the child.

11. By consent, the appeal has been admitted restricted only to the question of custody of child and we feel that even the access given to the mother in the impugned judgment and order is reasonable.

12. We are informed that presently the child is studying in Shri Ram Welfare Society's High School, Andheri (W), Mumbai and his exams end in October. We have therefore, directed that the custody will be taken by the father on 1.11.2004.

13. In consequence, civil application stands rejected. Ad-interim relief stands vacated. 9. In this view of the matter, Civil Application stands rejected. Ad-interim relief stands vacated.

14. Certified copy expedited.

15. Authenticated copy of this order be issued to the parties.

16. The learned Counsel for the applicant seeks stay of this order for a period of 4 weeks. Since we have already stated that the child is to be handed over on 1st November 2004, we are not inclined to grant any stay, particularly as in our view, the welfare of the child lies with his father.

17. In view of this order, Civil Application No. 121 of 2004 which would not survive, also stands disposed of.

(R.S.MOHITE,J.) (S.B. MHASE,J.)